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| 09/618,066      | 07/17/2000  | Veronique Ferrari    | 05725.0656-00       | 8522             |

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EXAMINER

SEIDLECK, BRIAN K

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 12/21/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/618,066

Applicant(s)

FERRARI ET AL.

Examiner

Brian K. Seidleck

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-161 is/are pending in the application.
- 4a) Of the above claim(s) 90-127 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-89 and 128-161 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Papers Received***

1. Receipt is acknowledged of applicant's response filed 10/23/2001.
2. Applicant's election with traverse of Group I (claims 1-89 and 128-161) in Paper No. 8 is acknowledged. The traversal is on the ground(s) that no serious burden is placed on the examiner to search the individual groups. This is not found persuasive because a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. It remains the examiner's position that that each distinct subject (i.e. sunscreen compositions, make-up and lip compositions, etc, have attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. A search for each of the individual compositions is not required for the others.

In response to applicant's arguments regarding Group IV, the examiner notes that Group III and IV should have both been under a "Group III" heading (claims 95-127). Claims 90-127 are withdrawn from consideration. The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-89 and 128-161 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavlin et al (U.S. Pat. No. 5,783,657) (cited in application and search report).

Pavlin discloses personal care products (deodorants, sun care products, make-ups, lip balm, etc.) comprising the claimed structuring polymer. See abstract; Col. 14; and Examples. The structuring polymer is preferred to provide self-supporting, transparent cosmetic compositions with improved rheological properties. See Cols. 1-2 and 16. It is noted that make-up and lip compositions contains dyestuffs. A continuous liquid fatty phase, such as mineral oil, is disclosed at Cols. 15-16 and Examples. As to the polymer properties claimed, it is the examiner's position that such properties are inherent to the polymer unless demonstrated otherwise. See columns 15-16 for the amphiphilic esters.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-89 and 128-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavlin et al (U.S. Pat. No. 5,783,657). In the event that applicant overcomes the 102 rejection above, the following 103 rejection applies.

Pavlin discloses personal care products (deodorants, sun care products, make-ups, lip balm, etc.) comprising the claimed structuring polymer. See abstract; Col. 14; and Examples. The structuring polymer is preferred to provide self-supporting, transparent cosmetic compositions with improved rheological properties. See Cols. 1-2 and 16. It is noted that make-up and lip compositions contains dyestuffs. A continuous liquid fatty phase, such as mineral oil, is disclosed at Cols. 15-16 and Examples. As to the polymer properties claimed, it is the examiner's position that such properties are inherent to the polymer unless demonstrated otherwise. See columns 15-16 for the amphiphilic esters.

The prior art teaches the claimed structuring polymer in order to provide self-supporting, transparent cosmetic compositions with improved rheological properties. The structuring polymer is preferred over conventional hydrocarbon vehicles and provides the abovementioned properties. See Cols. 1-2 and 16. Thus, one of ordinary skill in the art would have found it obvious to use the structuring polymer of the present claims in conventional cosmetic compositions in order to achieve these more desired results.

*Correspondence*

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Seidleck whose telephone number is (703) 305-4448.

The examiner can normally be reached on M-F (6:30am - 5:00pm) Every Wednesday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Brian K. Seidleck  
Examiner  
Art Unit 1615

BKS  
December 19, 2001

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER  
DEC 19 2001